



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/152591

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed October 03, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on November 14, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's PA request for PCW services.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Sharon Bailey

Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner is 46 years old. He lives with his minor son and daughter. His primary diagnoses include coronary artery anomaly, congestive heart failure and diabetes. He has a pacemaker. He

has neuropathy in his hands, trigger finger, weakness and forgetfulness. Functional limitations are endurance and dyspnea with minimal exertion. Activities are permitted “as tolerated.” In 2011, Petitioner suffered a stroke. He uses a bipap machine.

3. Petitioner has had a number of physician visits during the previous 12 months:

- March 12, 2013: it is noted that the Petitioner was hospitalized from 3/2/13 – 3/8/13. He reported worsening shortness of breath, edema and weight gain. He was noted to be alert and oriented. He was noted to have shortness of breath which worsened when ambulating. No focal deficits, nerve functions were intact and sensation intact. He was able to move all extremities independently. Strength was 5/5.
- June 18, 2013: Petitioner reported right middle finger pain with locking. Physician exam revealed right middle finger locking and stiffness. He was referred to the Orthopedic Hand clinic. He did not report and the physician did not note shortness of breath or weakness.
- August 21, 2013: Petitioner was hospitalized after experiencing chest pain. Petitioner believed his pacemaker had shocked him. He reported chest pain and shortness of breath for the previous 3 weeks. He reported noncompliance with his bipap machine and medications. Physical exam found no apparent distress. Lab results were normal. No notation of motor or sensory deficits, weakness, hand pain or shortness of breath.
- August 28, 2013: Petitioner reported to physician that he is able to perform all activities of daily living without problems. He reported walking 200-300 feet without shortness of breath. He denied lower extremity edema, dizziness or palpitations.

4. On July 18, 2013, a Personal Care Screening Tool (PCST) was completed for the Petitioner. The PCST indicates the Petitioner’s needs as follows:

- Bathing: Level D – partial physical assistance needed 7 days/week. Petitioner requires assist getting in and out of tub and help washing hard to reach areas due to shortness of breath, numbness and pain in hands.
- Dressing – Upper and Lower: Level D – partial physical assistance needed 7 days/week. Petitioner requires assist due to shortness of breath, numbness and pain in hands.
- Grooming: Level E – partial physical assistance needed 7 days/week. Petitioner requires assist with grooming tasks due to shortness of breath, numbness and pain in hands.
- Eating: Level A – feeds self. Needs assist with meal prep due to cardiac and respiratory being compromised.
- Mobility: Level C – moves self about with supervision and physical intervention 7 days/week. Petitioner requires stand-by assistance due to shortness of breath and need to rest between tasks.
- Toileting: Level C – toilets self under constant supervision and with physical intervention, 3x/day, 7 days/week. Petitioner requires standby assistance due to shortness of breath and need to rest between tasks.
- Transferring: Level C – transfers self with constant supervision and physical intervention 7 days/week. Petitioner requires stand-by assistance with transfer due to shortness of breath.
- Medication Assistance: Level B: needs reminders 4x/day, 7 days/week. Petitioner is forgetful.

The PCST further notes that Petitioner is an obsess cardiac/diabetic consumer with a defibrillator who has been experiencing difficulty due to prescribed meds. He has severe

blood pressure instability. He is weak at time and unable to adequately complete skin care for feet and legs.

5. On August 6, 2013, the Petitioner's provider, Quality Assurance Home Health, submitted a PA request to the agency requesting 24.5 hours/week of personal care services, 371 hours/year PRN, 7 hours/week PCW travel time and 6 skilled nurse visits to be used as needed for acute changes in condition.
6. On September 27, 2013, the agency denied the Petitioner's PA request.
7. On October 3, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

Personal care services are "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community." Wis. Admin. Code, §DHS 107.112(1)(a). Covered services include the following:

1. Assistance with bathing;
2. Assistance with getting in and out of bed;
3. Teeth, mouth, denture and hair care;
4. Assistance with mobility and ambulation including use of walker, cane or crutches;
5. Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing;
6. Skin care excluding wound care;
7. Care of eyeglasses and hearing aids;
8. Assistance with dressing and undressing;
9. Toileting, including use and care of bedpan, urinal, commode or toilet;
10. Light cleaning in essential areas of the home used during personal care service activities;
11. Meal preparation, food purchasing and meal serving;
12. Simple transfers including bed to chair or wheelchair and reverse; and
13. Accompanying the recipient to obtain medical diagnosis and treatment.

Wis. Admin. Code, §DHS 107.112(b).

Personal care workers can spend no more than one-third of their time performing housekeeping activities. Like all medical assistance services, PCW services must be medically necessary and cost effective. Wis. Admin. Code, §DHS 107.02(3)(e)1 and 3.

The agency denied the Petitioner's request for PCW services. In doing so, it reviewed medical records as well as the PCST and a Long Term Care Functional Screen (LTCFS) from December, 2011. The Personal Care Screening Tool is a computer program the agency uses to allow it to consistently determine the number of hours required by each recipient. The screening tool allots a specific amount of time in each area the recipient requires help, which the agency's reviewer can then adjust to account for variables missing from the screening tool's calculations. The LTCFS is a similar tool used by the agency.

In this case, I do not find the agency's consideration LTCFS findings from almost two years ago to be reasonable as an indication of the Petitioner's current needs. I do find the medical records of recent physician examinations to be relevant.

At the hearing, the Petitioner testified that he has difficulty grasping items with his hands and fingers due to neuropathy and pain. He testified that this interferes with his ability to complete activities of daily living. He also testified that shortness of breath interferes with activities of daily living. He stated that he is able to walk only 8 – 10 feet before he needs to take a breath.

The Petitioner's medical records do not support his statements regarding his inability to complete activities of daily living. The records do note that he has shortness of breath but the Petitioner consistently reported being able to complete activities of daily living. I recognize, as the agency did, that the Petitioner has a complex medical history. However, I cannot conclude that he requires PCW assistance at this time based on the evidence in the medical records. Therefore, I find that the agency properly denied the Petitioner's PA request. This does not prohibit the Petitioner from submitting another request if his condition worsens.

### **CONCLUSIONS OF LAW**

The agency properly denied the Petitioner's PA request.

**THEREFORE, it is**

**ORDERED**

That the petition be, and hereby is, dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

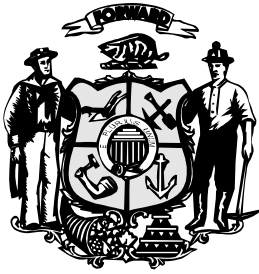
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 13th day of December, 2013

---

\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 13, 2013.

Division of Health Care Access And Accountability